married under section 143(b) if paragraph (1) of such section referred to any dependent of the taxpayer (and not simply to a son, stepson, daughter, or stepdaughter of such individual), shall be treated as not married for such taxable year. Thus, an individual who is married within the meaning of section 143(a) will be treated as not married for his entire taxable year for purposes of section 214, if:

(1) He files a separate return for such year,

(2) He maintains as his home a household which constitutes for more than one-half of such year the principal place of abode of one or more of his dependents with respect to whom he is entitled to a deduction under section 151 for such year,

(3) He furnishes over one-half of the cost of maintaining such household for such year, and

(4) His spouse is not a member of such household for any part of such year.

Thus, for example, an individual who is married during the taxable year and is living apart from his spouse, but is not legally separated under a decree of divorce or separate maintenance, may, if he is treated as not married by reason of this paragraph, determine the limitation upon the amount of his employment-related expenses without taking into account the adjusted gross income of his spouse under §1.214A–2(c)(2), without complying with the requirement under paragraph (a) of this section for filing a joint return with his spouse, and without complying with the requirement under paragraph (b) of this section that his spouse be gainfully employed. The principles of §1.143–1(b) shall apply in making determinations under this paragraph.

[T.D. 7411, 41 FR 15409, Apr. 13, 1976]

§1.214A–5 Other special rules relating to employment-related expenses.

(a) *Payments to related individuals.* No deduction will be allowed under section 214(a) and §1.214A–1(a) for the amount of any employment-related expenses paid by the taxpayer to an individual who bears to the taxpayer any relationship described in section 152(a) (1) through (8). These relationships are those of a son or daughter or descendant thereof; a stepson or stepdaughter; a brother, sister, stepbrother, or stepsister; a father or mother or an ancestor of either; a stepfather or stepmother; a nephew or niece; an uncle or aunt; or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law. In addition, no deduction will be allowed under section 214(a) for the amount of any employment-related expenses paid by the taxpayer to an individual who qualifies as a dependent of the taxpayer for the taxable year within the meaning of section 152(a)(9), which relates to an individual (other than the taxpayer's spouse) whose principal place of abode for the taxable year is the home of the taxpayer and who is a member of the taxpayer's household.

(b) *Expenses qualifying as medical expenses.* An expense which may constitute an amount otherwise deductible under section 213, relating to medical, etc., expenses, may also constitute an expense for which a deduction is allowable under section 214(a) and §1.214A–1(a). In such a case, that part of the amount for which a deduction is allowed under section 214(a) will not be considered as an expense allowable as a deduction under section 213. On the other hand, where an amount is treated as a medical expense under section 213 for purposes of determining the amount deductible under that section, it may not be treated as an employment-related expense for purposes of section 214. The application of this paragraph may be illustrated by the following examples:

Example 1. A Taxpayer pays $520 of employment-related expenses in the taxable year for the care of his child during one month of such year when the child is physically incapable of caring for himself. These expenses are incurred for services performed in the taxpayer's household and are of a nature which qualify as medical expenses under section 213. The taxpayer's adjusted gross income for the taxable year is $5,000. Of the total expenses, the taxpayer may take $400 into account under section 214; the balance of the expenses, or $120, may be treated as medical expenses to which section 213 applies. However, this amount does not exceed 3 percent of the taxpayer's adjusted gross income for the taxable year and is thus not allowable as a deduction under section 213.

Example 2. Assume the same facts as in *Example 1.* In such case it is not proper for the

taxpayer first to determine under section 213 his deductible medical expenses of $370 ($520−[$5,000×3%]) and then claim the $150 balance as employment-related expenses for purposes of section 214. This result is reached because the $150 balance has been treated as a medical expense in determining the amount deductible under section 213.

Example 3. A taxpayer incurs and pays $1,000 of employment-related expenses each month during the taxable year for the care of his child. These expenses are incurred for services performed in the taxpayer's household, and they also qualify as medical expenses under section 213. The taxpayer's adjusted gross income for the taxable year is $18,000. No reduction in the amount of the expenses is required under §1.214A–3, and the taxpayer takes $4,800 ($400×12) of such expenses into account under section 214. The balance, or $7,200, he treats as medical expenses for purposes of section 213. The allowable deduction under section 213 for such expenses is limited to the excess of such balance of $7,200 over $540 (3 percent of the taxpayer's adjusted gross income of $18,000), or $6,600.

[T.D. 7411, 41 FR 15410, Apr. 13, 1976]

§ 1.215–1 Periodic alimony, etc., payments.

(a) A deduction is allowable under section 215 with respect to periodic payments in the nature of, or in lieu of, alimony or an allowance for support actually paid by the taxpayer during his taxable year and required to be included in the income of the payee wife or former wife, as the case may be, under section 71. As to the amounts required to be included in the income of such wife or former wife, see section 71 and the regulations thereunder. For definition of *husband* and *wife* see section 7701(a) (17).

(b) The deduction under section 215 is allowed only to the obligor spouse. It is not allowed to an estate, trust, corporation, or any other person who may pay the alimony obligation of such obligor spouse. The obligor spouse, however, is not allowed a deduction for any periodic payment includible under section 71 in the income of the wife or former wife, which payment is attributable to property transferred in discharge of his obligation and which, under section 71(d) or section 682, is not includible in his gross income.

(c) The following examples, in which both H and W file their income tax returns on the basis of a calendar year, illustrate cases in which a deduction is or is not allowed under section 215:

Example 1. Pursuant to the terms of a decree of divorce, H, in 1956, transferred securities valued at $100,000 in trust for the benefit of W, which fully discharged all his obligations to W. The periodic payments made by the trust to W are required to be included in W's income under section 71. Such payments are stated in section 71(d) not to be includible in H's income and, therefore, under section 215 are not deductible from his income.

Example 2. A decree of divorce obtained by W from H incorporated a previous agreement of H to establish a trust, the trustees of which were instructed to pay W $5,000 a year for the remainder of her life. The court retained jurisdiction to order H to provide further payments if necessary for the support of W. In 1956 the trustee paid to W $4,000 from the income of the trust and $1,000 from the corpus of the trust. Under the provisions of sections 71 and 682(b), W would include $5,000 in her income for 1956. H would not include any part of the $5,000 in his income nor take a deduction therefor. If H had paid the $1,000 to W pursuant to court order rather than allowing the trustees to pay it out of corpus, he would have been entitled to a deduction of $1,000 under the provisions of section 215.

(d) For other examples, see sections 71 and 682 and the regulations thereunder.

§ 1.215–1T Alimony, etc., payments (temporary).

Q–1 What information is required by the Internal Revenue Service when an alimony or separate maintenance payment is claimed as a deduction by a payor?

A–1 The payor spouse must include on his/her first filed return of tax (Form 1040) for the taxable year in which the payment is made the payee's social security number, which the payee is required to furnish to the payor. For penalties applicable to a payor spouse who fails to include such information on his/her return of tax or to a payee spouse who fails to furnish his/her social security number to the payor spouse, see section 6676.

(98 Stat. 798, 26 U.S.C. 1041(d)(4); 98 Stat. 802, 26 U.S.C. 152(e)(2)(A); 98 Stat. 800, 26 U.S.C. 215(c); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7973, 49 FR 34458, Aug. 31, 1984]